

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL K. AMISSAH,	:	CIVIL ACTION
Petitioner	:	
	:	
	:	
V.	:	
	:	
	:	
JOHN ASHCROFT, U.S. Attorney	:	NO. 02-CV-973
General, and UNITED STATES	:	
IMMIGRATION AND	:	
NATURALIZATION SERVICE,	:	
Respondents.	:	

MEMORANDUM AND ORDER

McLaughlin, J.

March 25, 2002

The petitioner, Michael K. Amissah, a native of Ghana, was ordered removed from the United States on the basis of his conviction for distributing cocaine. The petitioner appealed the order of removal and, on February 20, 2002, the Board of Immigration Appeals dismissed his appeal. The petitioner then filed suit in this Court, seeking a writ of habeas corpus and a declaratory judgment declaring that he is a United States Citizen.

The government has moved to dismiss or transfer, arguing that this Court lacks jurisdiction over the petitioner's case because he is in custody in Oakdale, Louisiana, in the

Western District of that state. Because the petitioner's action for a declaratory judgment cannot **go forward** in the district court, and because this Court lacks personal jurisdiction over the warden of the **prison** where the petitioner is being held, as is required in habeas cases, I will grant the government's motion to transfer **this** case.

In response to the government's motion to dismiss or transfer, the petitioner argues that this case may proceed as a habeas action with the attorney general as the respondent, in which case this Court would have jurisdiction because the attorney general **is** subject to personal jurisdiction **in** the Eastern District of Pennsylvania. In the alternative, he asks that the case be bifurcated into a habeas action and a declaratory judgment action. The habeas action could then be transferred to Louisiana, while the declaratory judgment action could proceed here.

I will **address** the petitioner's request that the case be bifurcated first. The petitioner argues that **this** Court has jurisdiction **over** his declaratory judgment action under the following statutes: (1) 28 U.S.C. § 1331, which provides that the district **courts** have jurisdiction over all civil actions arising under **the Constitution, laws or treaties** of the United States; (2) 28 U.S.C. § **1361**, which provides that the district courts

have jurisdiction to compel an officer or employee of the United States to perform a duty owed to the plaintiff; (3) the Administrative Procedures Act; (3) the Declaratory Judgment Act; and (4) the substantive statutes governing his claim to citizenship. None of these statutes provides district courts with the authority to review deportation orders.

Upon the enactment of the 1952 Immigration and Nationality Act, judicial review **of** deportation orders could **be** obtained by means of a declaratory judgment action in federal district court. See I.N.S. v. St. Cyr, 121 S.Ct. 2271, 2283 n.26 (2001) (citing Shaughnessy v. Pedreiro, 349 U.S. 48, 51-52 (1955)). However, in 1961, Congress consolidated review in the courts of appeals, giving to the circuit courts exclusive jurisdiction over challenges to deportation orders.' See I.N.S. v. St. Cyr, 121 S.Ct. at 2283 n.26. The petitioner's request that his case **be** bifurcated into a habeas case and a declaratory judgment case must **be** rejected, then, because challenges to

¹ The Court notes that while the relevant statute appears to preclude review in cases like **this** one, where the order of removal **is** based on the alien having been convicted of an aggravated felony, the Court of Appeals would have jurisdiction to **decide** the question of the petitioner's citizenship. See Camacho-Marroquin v. I.N.S., 188 F.3d 649, 651 (5th Cir. 1999). This is because the Court **of** Appeals has jurisdiction to determine its own jurisdiction, and one of the "prerequisites for precluding review" is that the petitioner *is* an alien. Id.

orders of deportation by way of declaratory judgment actions in the district courts are not permitted.²

Turning to the petitioner's argument that his habeas claim can proceed here, he argues that this Court has jurisdiction because the attorney general is a proper respondent in alien habeas cases **and** the attorney general is subject to personal jurisdiction in the Eastern District of Pennsylvania. However, the Third Circuit has held that the attorney general is not a proper respondent in a habeas case.

In Yi v. Maugans, 24 F.3d 500, 507 (3d Cir. 1994), the plaintiffs argued that the district court erred when it declined to certify a habeas class, with the district director of the **I.N.S.** - over whom the court had personal jurisdiction - **as** the respondent. The Third Circuit affirmed, on the grounds that the district court's habeas territorial jurisdiction was limited to aliens held in its district. The **Third** Circuit explained that:

"It is the warden of the prison or the facility where

² The petitioner argues that the declaratory judgment action he proposes would not be a challenge to **an** order of removal, but rather a request for confirmation of his United States citizenship. However, citizens may not bring such actions if the issue of their status arose by reason of, or in connection with, a **removal** proceeding, or if their status is "in issue" in a removal proceeding. 8 U.S.C. § 1503(a). This **statutory** provision applies to the petitioner, because the issue **of** his citizenship status arose **by** reason **of** a removal proceeding and because his status **was** **'in** issue" in that proceeding.

the detainee **is** held that is considered the custodian for purposes of a **habeas** action . . . This is because it is the warden **that** has day-to-day control over the prisoner and who can produce the actual body . . . That the district director has the power **to** release the detainees does **not** alter our conclusion. Otherwise, the Attorney General of the United States could be considered the custodian **of** every alien and prisoner in custody[.]”

Yi v. Maugans, 24 F.3d at 507.

The petitioner argues that Yi v. Mausans is distinguishable from his case, because it dealt with exclusion as opposed to removal, and removal is to be taken more seriously. It may be true that aliens have more rights in removal than in exclusion proceedings, but this is not relevant to **the** issue of who is to be considered the custodian in a habeas action.

The petitioner also argues that the language in Yi v. Maugans dealing with **the** question of who is the proper respondent in a habeas case is dicta. The language **is** not dicta, though, because the Third Circuit based its decision to affirm on the issue of certifying **a** habeas class on its conclusion that the district court’s habeas jurisdiction was limited to petitioners in custody in the Middle District of Pennsylvania.

Because the petitioner **is** detained outside of the Eastern District of Pennsylvania, this Court lacks jurisdiction **over** his habeas claim. **This case** shall therefore **be** transferred to the Western District of Louisiana, where jurisdiction

lies. See 28 U.S.C. § 1631 (permitting transfer to cure "want of jurisdiction").

An appropriate order follows.

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JOHN ASHCROFT, U.S. Attorney
General, and UNITED STATES
IMMIGRATION AND
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Respondents.

NO. 02-CV-973

ORDER

~~AND~~ NOW, this 25th day of March, 2002, upon
consideration of the respondents' motion to dismiss or transfer
(Document #4), and of the petitioner's opposition thereto, it is
hereby ORDERED and DECREED that the motion is GRANTED for the
reasons given in a memorandum of today's date.

The Clerk of Court shall transfer this case to the
Western District of Louisiana.

BY THE COURT:


~~Mark J.~~ McLaughlin, J.

1 3/25/02:

Atriana Austova, Esq.
John Britt, Esq.